

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

JAN F. BECKER

PETITIONER

VS.

NO. 4:07CV00826 WRW/BD

**STEWART C. HUDSON, Warden,
Mansfield Correctional Institution
Mansfield, Ohio, *et al.***

RESPONDENTS

RECOMMENDED DISPOSITION

I. Procedure for Filing Objections:

The following recommended disposition has been sent to United States District Judge William R. Wilson, Jr. Any party may file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from the date you receive the Recommended Disposition. A copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District

Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. The details of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

II. Background:

On September 4, 2007, Petitioner, an Ohio prisoner proceeding pro se, filed a motion for leave to proceed *in forma pauperis* (#1) and a petition for writ of habeas corpus under “28 U.S.C. § 2254” (#2). Petitioner was convicted by a jury in the Holmes County, Ohio, Court of Common Pleas of various types of sexual assault and was sentenced to three consecutive life sentences. *State v. Becker*, 2001 WL 1744472 at *1 (Ohio App. 5th Dist. 2001). Petitioner is currently incarcerated in the Mansfield Correctional Institution in Mansfield, Ohio.

III. Recommendation:

The Court has conducted a preliminary review of the petition under Rule 4 of the Rules Governing Section 2254 cases, and for the reasons set forth below, the Court recommends that the petition be dismissed.

Under 28 U.S.C. § 2241(d) “[w]here an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him.” Petitioner is not in custody in either judicial district in this State, but rather is in custody in Mansfield, Ohio. As noted, he was convicted in state court in Holmes County, Ohio. Accordingly, this Court does not have jurisdiction over the petition or the respondent.

Further, Petitioner has already been denied habeas relief from a district court in the Northern District of Ohio, and attaches to his petition an unpublished decision of the Sixth Circuit affirming the district court’s dismissal of his habeas petition. *Becker v. Bradshaw*, No. 04-3816, December 6, 2005. Accordingly, this petition is a second or successive petition. Under 28 U.S.C. § 2244(b), a second or successive habeas petition must be dismissed unless the petitioner has an order from the court of appeals authorizing the district court to consider it. 28 U.S.C. § 2244(b)(3)(A). Petitioner has not provided the Court with such an order. Accordingly, the petition should be dismissed.

Petitioner has unsuccessfully attempted to file similar habeas petitions in a number of other federal district courts around the country. See *e.g. Becker v. Hudson*, No. 6:07cv042WSS (W.D. Texas, Feb. 12, 2007); *Becker v. Hudson*, No. 2:06cv830-JLG-MRA (S.D. Ohio); *Becker v. Hudson*, No. 1:07cv10063-RWZ (D. Mass); *Becker v. Hudson*, No. 4:07cv19-MP/WCS (N.D. Texas); *Becker v. Hudson*, No. CIV-07-0115 WJ/KBM (D. New Mexico).

The Court recommends that the District Court summarily DISMISS the petition (#2), and DENY the pending motion to proceed *in forma pauperis* (#1) as moot.

DATED this 18th day of October, 2007.



UNITED STATES MAGISTRATE JUDGE